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Request for the inclusion of a supplementary item in the agenda of the sixty-second session

Observer status for the Energy Charter Conference in the General Assembly

Letter dated 30 July 2007 from the Permanent Representative of Japan to the United Nations addressed to the Secretary-General

On behalf of the States members of the Energy Charter Conference, I have the honour to request that the matter of granting of observer status to the Energy Charter Conference be considered under a new item, "Observer status for the Energy Charter Conference in the General Assembly", of the agenda of the sixty-second session of the General Assembly.

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum (annex I) in support of the above request and a draft resolution (annex II) are attached.

I have further the honour to request that the present letter and its annexes be circulated as a document of the General Assembly.

(*Signed*) Kenzo **Oshima**
Permanent Representative of Japan
to the United Nations

07-44953S (E) 130807

Annex I

Explanatory memorandum

Energy Charter Conference

Background

The Energy Charter Conference is the governing body of the Energy Charter Treaty. The Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (together referred to as the Treaty) were signed in December 1994 and entered into legal force in April 1998. To date the Treaty has been signed or acceded to by 51 States and the European Union. Moreover, 19 countries and 13 international institutions currently participate in the activities of the Energy Charter Conference as observers. A list of member States (enclosure A) and a list of observer countries and observer institutions (enclosure B) are attached.

In a world of increasing globalization and interdependence among energy consumer, producer and transit countries, the value of multilateral rules providing a balanced and efficient framework for international cooperation is widely recognized. Keeping the above in mind, the Treaty is a legally binding multilateral instrument on investment and trade, the only one of its kind dealing specifically with intergovernmental cooperation in the energy sector. As such, the Treaty provides a multilateral framework for energy cooperation that is unique under international law, the strategic value of which is likely to increase in the context of efforts to build a legal foundation for global energy security, based on the principles of open, competitive markets and sustainable development.

Objectives

Article 2 of the Treaty highlights that the member States are desirous of improving security of energy supply and of maximizing the efficiency of production, conversion, transport, distribution and use of energy, to enhance safety and to minimize environmental problems on an acceptable economic basis. To this end, the Treaty has been negotiated so that the member States could take action in the following fields:

1. Development of trade in energy consistent with the major relevant multilateral agreements such as WTO, its related instruments, and nuclear non-proliferation obligations and undertakings. This is achieved by means of:

   - an open and competitive market for energy products, materials, equipment and services;
   - access to energy resources, and exploration and development thereof, on a commercial basis;
   - access to local and international markets;
   - removal of technical, administrative and other barriers to trade in energy and associated equipment, technologies and energy-related services;
   - modernization, renewal and rationalization by industry of services and installations for the production, conversion, transport, distribution and use of energy;
   - promoting the development and interconnection of energy transport infrastructure;

- promoting best possible access to capital, particularly through appropriate existing financial institutions;
- facilitating access to transport infrastructure, for international transit;
- access on commercial terms to technologies for the exploration, development and use of energy resources.

2. Cooperation in the energy field, through:
   - coordination of energy policies;
   - mutual access to technical and economic data, consistent with proprietary rights;
   - formulation of stable and transparent legal frameworks creating conditions for the development of energy resources;
   - coordination and, where appropriate, harmonization of safety principles and guidelines for energy products and their transport, as well as for energy installations, at a high level;
   - facilitating the exchange of technology information and know-how in the energy and environment fields, including training activities;
   - research, technological development and demonstration projects.
3. Energy efficiency and environmental protection, through:
   - creating mechanisms and conditions for using energy as economically and efficiently as possible, including, as appropriate, regulatory and market-based instruments;
   - promotion of an energy mix designed to minimize negative environmental consequences in a cost-effective way through:
     (i) market-oriented energy prices which more fully reflect environmental costs and benefits;
     (ii) efficient and coordinated policy measures related to energy;
     (iii) use of new and renewable energies and clean technologies;
   - achieving and maintaining a high level of nuclear safety and ensuring effective cooperation in this field.

Fundamental principles

Keeping the above objectives in mind, the fundamental aim of the Treaty is to strengthen the rule of law on energy issues, by creating a level playing field of rules to be observed by all participating governments, thus minimizing the risks associated with energy-related investments and trade. The Treaty's provisions focus on five broad areas:

1. *Energy Investment*: the Treaty ensures the protection of foreign energy investments based on the principle of non-discrimination. By accepting the Treaty, a country takes on the obligation to extend national treatment, or most-favoured-nation treatment (whichever is more favourable), to nationals and legal entities of other member States that have invested;

2. *Energy Trade*: the Treaty's trade provisions, which are in line with the WTO rules and practice, are founded on the fundamental principles of non-discrimination, transparency and a commitment to progressive liberalization of international trade;

3. *Energy Transit*: the Treaty's transit provisions require a country to facilitate the transit of energy on a non-discriminatory basis consistent with the principles of freedom of transit. This is a critical issue for the collective energy security of the Treaty's member States, since energy resources are increasingly being transported across multiple national boundaries on their way from producers to consumers;

4. *Energy Efficiency and Related Environmental Aspects*: the Treaty requires a country to formulate clear policy aims for improving energy efficiency and reducing the energy cycle's negative environmental impact;

5. *Dispute Settlement Mechanisms*: the Treaty establishes dispute settlement procedures for cases of investment-related disputes between an investor and a member State, and for State-State disputes concerning application or interpretation of the Treaty. Arbitration proceedings may be brought by a member State (or its investor) under the United Nations Commission on International Trade Law (UNCITRAL) Rules, under the International Convention for the Settlement of Investment Disputes of the World Bank or under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

United Nations agencies which are observers to the Energy Charter Conference

The International Atomic Energy Agency and the United Nations Economic Commission for Europe have observer status to the Energy Charter Conference.

Documents registered with the United Nations

The Treaty has been registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations since 30 September 1999.

Institutions

The Energy Charter Conference is the governing and decision-making body for the Energy Charter process. All States that have signed or acceded to the Treaty are members of the Conference, which meets on a regular basis to:

- discuss policy issues affecting energy cooperation among the Treaty's member States;
- review implementation of the provisions of the Treaty;
- consider new instruments and projects on energy issues.

Regular meetings of the Conference's subsidiary groups, i.e., the Investment Group, the Trade and Transit Group, and the Energy Efficiency Group are held in between the Conference meetings.

The Energy Charter Conference is served by a permanent Secretariat based in Brussels. The Secretariat is staffed by energy experts from various countries of the Conference's constituency, and is headed by a Secretary-General.

The Secretariat's functions are:

- to monitor implementation of the Treaty;
- to organize and administer meetings of the Energy Charter Conference and its subsidiary bodies;
- to provide analytical support and advice to the Energy Charter Conference and its subsidiary bodies on all aspects of the Energy Charter process;
- to represent the Energy Charter Conference in the development of its relations with non-member States and other relevant international organizations and institutions;
- to support negotiations on new instruments mandated by the Energy Charter Conference;
- to conduct or facilitate dispute resolution/conciliation procedures.

The Energy Charter Process and the United Nations General Assembly

The Energy Charter is an open process. Interested non-member countries are welcome to join, subject to the approval of the Energy Charter Conference and to a demonstration by the country concerned of its readiness to take on the obligations contained in the Treaty.

However, participation in the Energy Charter process is not limited merely to the act of signing the Treaty. The Energy Charter represents not only a legal framework, but also a multilateral policy forum where governments from across the world participate in a dialogue on issues affecting cooperation in the energy sector, such as energy market restructuring, promoting energy efficiency, reducing barriers to energy investments and energy trade globally, hence eventually resulting in securing energy supplies with the ultimate objective of ensuring sustainable development.

Keeping in mind the areas of work of the Energy Charter Conference and the work of the various departments and agencies of the United Nations, and more specifically the United Nations Commission on Sustainable Development, there remains a significant area where both the organizations can benefit by contributing more efficiently to the work on sustainable development through enhancing cooperation. Therefore, the Treaty's member States believe that attaining observer status to the United Nations General Assembly will not only allow the United Nations and the Energy Charter Conference to achieve more complementarity in their work but will also widen potential for more systematic forms of cooperation. Such an arrangement will also give the Energy Charter Conference an opportunity to increase its interactions with other participants in the United Nations General Assembly, including countries and regional and international organizations.

Enclosure A

THE ENERGY CHARTER SECRETARIAT

Member States - Energy Charter Conference
January 2007

1. Albania
2. Armenia
3. Australia*
4. Austria
5. Azerbaijan
6. Belarus**
7. Belgium
8. Bosnia and Herzegovina
9. Bulgaria
10. Croatia
11. Cyprus
12. Czech Republic
13. Denmark
14. Estonia
15. European Community
16. Finland
17. France
18. Georgia
19. Germany
20. Greece
21. Hungary
22. Iceland*
23. Ireland
24. Italy
25. Japan
26. Kazakhstan
27. Kyrgyzstan
28. Latvia
29. Liechtenstein
30. Lithuania
31. Luxembourg
32. Malta
33. Moldova
34. Mongolia
35. Netherlands
36. Norway*
37. Poland
38. Portugal
39. Romania
40. Russian Federation**
41. Slovakia
42. Slovenia
43. Spain
44. Sweden
45. Switzerland
46. Tajikistan
47. The former Yugoslav Republic of Macedonia
48. Turkey
49. Turkmenistan
50. Ukraine
51. United Kingdom of Great Britain and Northern Ireland
52. Uzbekistan

* Countries which have not yet deposited instruments of ratification to the Treaty.
** Countries which have not yet deposited instruments of ratification to the Treaty, but apply it provisionally.

Enclosure B

THE ENERGY CHARTER SECRETARIAT

List of Observers - Energy Charter Conference
January 2007

I. Countries

1. AFGHANISTAN
2. ALGERIA
3. BAHRAIN
4. CANADA
5. IRAN (Islamic Republic of)
6. KUWAIT
7. MOROCCO
8. NIGERIA
9. OMAN
10. PAKISTAN
11. PEOPLE'S REPUBLIC OF CHINA
12. QATAR
13. SAUDI ARABIA
14. SERBIA
15. SOUTH KOREA
16. TUNISIA
17. UNITED ARAB EMIRATES
18. UNITED STATES OF AMERICA
19. VENEZUELA (Bolivarian Republic of)

II. Institutions

1. on 10 December 2004: ASEAN
2. on 7 December 2000: BASREC
3. on 30 June 1999: BSEC
4. on 13 January 1997: CIS-EPC
5. on 4 October 1995: EBRD
6. on 4 October 1995: EIB
7. on 4 October 1995: IAEA
8. on 4 October 1995: IEA
9. on 4 October 1995: NEA/OECD
10. on 4 October 1995: OECD
11. on 4 October 1995: UN-ECE
12. on 4 October 1995: WORLD BANK
13. on 4 October 1995: WTO

Annex II

Draft resolution

Observer status for the Energy Charter Conference in the General Assembly

The General Assembly,

Wishing to promote cooperation between the United Nations and the Energy Charter Conference,

1. *Decides* to invite the Energy Charter Conference to participate in the sessions and the work of the General Assembly in the capacity of observer;

2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.